

and III, MPEP § 806.05(h) relative to Groups I and II, and MPEP § 806.05(f) relative to Groups II and III). The Examiner relies on these specific MPEP sections in an attempt to demonstrate that the claims of the various Groups are related and are distinct.

However, the Applicant wishes to identify to the Examiner additional, overriding principles that govern restriction practice. These principles are at the very foundation of 35 U.S.C. § 121, 37 CFR 1.141-1.142, and the MPEP (especially MPEP § 803). First, with reference to all of these resources, it is clear that restriction is not mandatory. Instead, requiring restriction is at the discretion of the Examiner and the Examiner does not *have to* require restriction...even if the inventions are distinct. Second, before restriction is appropriate, there must be *serious* burden on the Examiner in the context of the search and examination.

In the instant application, the Examiner is not forced to restrict the claims of Groups I-III as outlined above. Further, close examination of the independent claims in each group (claims 12 and 47 in Group I, claims 21, 26, and 49 in Group II, and claims 45 and 46 in Group III), reveals many commonalities between the claim elements that result in searches overlapping to a considerable extent. The key elements recited in each claim possess significant similarities. One example of these similarities is the positively recited theoretical number average molecular weight for the polyol which is in all of the independent claims ("of from about 3,800 to about 10,000" in independent claims 12, 21, 26, 45, and 46 and "of from about 100 to about 10,000" in independent claims 47 and 49). The similarities between the claims of Groups I-III precludes any burden (let alone a serious burden) from being imposed on the Examiner. That is, it would not be an undue burden on the Examiner to search the prior art for the claims of Groups I-III.

The arguments set forth above establish that the search and examination of the present application can be made without serious burden to the Examiner in accordance with the very foundation of restriction practice. As such, the Applicant requests that the Examiner search and examine the entire application on its merits including the claims of Groups I-III together, even though the claims of the various Groups may be distinct.

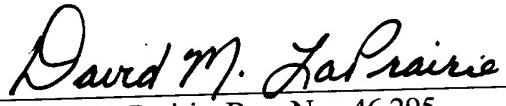
Due to the reasoning set forth above, the restriction requirement is improper and should be withdrawn. As required by the Rules, the Applicant provisionally elects claims 12-20, 35-37, and 47-48 of Group I.

No fees are believed to be due. However, if necessary, the Commissioner is authorized to charge Deposit Account No. 08-2789 for any additional fees or to credit the account for any overpayment.

Respectfully submitted,

**HOWARD & HOWARD ATTORNEYS, P.C.**

Date: June 1, 2004

  
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**CERTIFICATE OF MAILING**

I hereby certify that the attached **Request For Reconsideration of Restriction Requirement** for Serial Number 10/668,759, filed September 23, 2003, is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to the **Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**, on **June 1, 2004**.

  
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Brenda J. Hughes